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2
3 UNITED STATES DISTRICT COURT
4 WESTERN DISTRICT OF WASHINGTON
5 AT SEATTLE

6 F.L.B., et al.,

7 Plaintiffs,

8 v.

9 LORETTA E. LYNCH, et al.,

10 Defendants.

C14-1026 TSZ

MINUTE ORDER

11 The following Minute Order is made by direction of the Court, the Honorable
Thomas S. Zilly, United States District Judge:

12 (1) With regard to plaintiffs' fourth motion to certify class, docket no. 230,
13 the parties are DIRECTED to file, on or before March 21, 2016, supplemental briefs, not
14 to exceed ten (10) pages in length, regarding whether a class along the following lines,
rather than the class and subclasses proposed by plaintiffs, should be certified:

15 All individuals under the age of fourteen (14) who are (i) in removal
16 proceedings on or after July 9, 2014, [[within the boundaries of the Ninth
17 Judicial Circuit,]] which are not consolidated with the removal proceedings
of a parent or legal guardian; (ii) without legal representation in such
removal proceedings; (iii) financially unable to retain counsel; and
18 (iv) potentially eligible for asylum under 8 U.S.C. § 1158 or other relief
because of conditions in the family of origin or country of citizenship.¹

19 ¹ In requesting further briefing from the parties concerning the above proposed class, the Court
20 does not mean to suggest how it will decide the issues (including improper venue) raised in
21 defendants' motion to dismiss, docket no. 229. In addition, the Court does not intend to rule out
22 from the definition of any class or subclass additional material characteristics of potential class
23 members (for example, "inadmissible" versus "deportable" alien status, or "unaccompanied
minor" status), and the parties should discuss in their supplemental briefs not only whether the
above proposed requirements are appropriate, but also whether others should be incorporated.

1 In their supplemental briefs, the parties should address whether the Court, in assessing
2 the ability of juveniles to navigate through removal proceedings without an attorney,
3 should be guided by state law concerning, for example, (i) the age at which minors may
4 be declared emancipated, see RCW 13.64.010 (age 16); see also Cal. Fam. Code § 7120
5 (age 14), and thereby have the right *inter alia* to sue, be sued, enter into contracts, and
6 give informed consent for the receipt of health care services, see RCW 13.64.060(1); see
7 also Cal. Fam. Code § 7050; (ii) the age at which children are presumed to have the
8 capacity to commit crime, see RCW 9A.04.050 (age 12); see also Cal. Penal Code § 26
9 (age 14); *cf. In re E.P.*, 291 So.2d 238, 239 (Fla. Dist. Ct. App. 1974) (applying common
10 law “rebuttable presumption that an infant between the ages of seven and fourteen is
11 incapable of committing a crime”); (iii) the age at which juveniles may be prosecuted as
adults for certain offenses, see RCW 13.04.030(e)(v) (exclusive adult criminal court
jurisdiction over juveniles age 16 or older alleged to have committed an enumerated
offense); RCW 13.40.110(1) (discretionary decline hearing may be conducted with
respect to juvenile of any age); see also Cal. Welf. & Inst. Code § 707(d)(2) (age 14);
Tex. Fam. Code § 54.02 (age 14); *cf. In re B.W.*, 313 S.W.3d 818 (Tex. 2010) (“child
under fourteen cannot legally consent to sex”); and/or (iv) the age at which other rights
generally associated with adulthood (*e.g.*, the privilege to drive, the right to marry, etc.)
are or may be conferred on persons under the age of eighteen (18). The supplemental
briefs shall also discuss whether the above proposed class would satisfy the criteria of
Federal Rule of Civil Procedure 23(a) & (b)(2).

12 (2) Within seven (7) days of the date of this Minute Order, plaintiffs shall file
13 the entire transcript of the deposition of Jack Weil.

14 (3) Defendants’ motion to compel discovery, docket no. 244, is RENOTED to
15 March 23, 2016. Any response shall be filed by 8:00 a.m., Seattle time, on March 21,
2016. Any reply shall be filed by noon, Seattle time, on March 23, 2016. The parties
shall be prepared to address the motion at the hearing scheduled for March 24, 2016.

16 (4) At the hearing scheduled for March 24, 2016, the Court will first hear oral
17 argument regarding defendants’ motion to dismiss, docket no. 229, and then will hear
from counsel about plaintiffs’ fourth motion to certify class, docket no. 230, before
turning to defendants’ motion to compel discovery, docket no. 244.

18 (5) Defendants’ motion to strike, docket no. 246, the Supplemental Declaration
19 of Professor Laurence Steinberg, docket no. 242, is GRANTED.

20 (6) The Clerk is directed to send a copy of this Minute Order to all counsel of
record.

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1 DATED this 10th day of March, 2016.

2 William M. McCool
3 Clerk

4 s/Karen Dews
5 Deputy Clerk